

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Casey McCann	Team: Squad #11	CCRB Case #: 201900359	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 01/02/2019 3:30 AM	Location of Incident: inside of § 87(2)(b)	Precinct: 79	18 Mo. SOL 7/2/2020	EO SOL 2/16/2021	
Date/Time CV Reported Wed, 01/02/2019 9:38 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 01/14/2019 11:03 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DTS Matthew Demaio	441	952663	SRG
2. An officer			Unknown
3. Officers			Unknown
4. POM Sean Kern	10507	955000	SRG

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DTS Adam Conlin	04118	946871	SRG
2. LT Erik Lubrano	00000	924088	SRG
3. DTS Robert Altieri	5519	949994	SRG
4. POM Mark Stevenson	07132	953748	SRG

Officer(s)	Allegation	Investigator Recommendation
A.DTS Matthew Demaio	Abuse: Detective Matthew Demaio stopped § 87(2)(b)	
B.DTS Matthew Demaio	Force: Detective Matthew Demaio pointed his gun at § 87(2)(b)	
C. An officer	Force: An officer used physical force against § 87(2)(b)	
D. An officer	Force: An officer used physical force against § 87(2)(b)	
E. An officer	Force: An officer used physical force against § 87(2)(b)	
F. An officer	Force: An officer used physical force against § 87(2)(b)	
G. Officers	Force: Officers hit § 87(2)(b) against a wall.	
H. An officer	Force: An officer restricted § 87(2)(b) s breathing.	

Officer(s)	Allegation	Investigator Recommendation
I. Officers	Force: Officers used physical force against § 87(2)(b)	
J. An officer	Force: An officer used physical force against § 87(2)(b)	
K. An officer	Abuse: An officer frisked § 87(2)(b)	
L. An officer	Abuse: An officer searched § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

### Case Summary

On January 2, 2019, § 87(2)(b) filed this complaint with IAB via telephone. The complaint was received at the CCRB on January 14, 2019.

On January 2, 2019, at approximately 3 a.m., at § 87(2)(b) in Brooklyn, Detective Matthew Demaio of Strategic Response Group Anti-Crime (SRG) stopped § 87(2)(b) (Allegation A: Abuse of Authority, § 87(2)(g)). Det. Demaio allegedly pointed his gun at § 87(2)(b) (Allegation B: Force, § 87(2)(g)). An officer punched § 87(2)(b) in the corner of his right eye (Allegation C: Force, § 87(2)(g)). Officers carried § 87(2)(b) down the stairs and an officer pushed § 87(2)(b)'s head down so that his head made contact with every stair (Allegation D: Force, § 87(2)(g)). Once on the first floor, an officer pushed § 87(2)(b)'s head and slammed it into the floor, and another officer punched § 87(2)(b) in the lower lip (Allegations E and F: Force, § 87(2)(g)). As the officers carried § 87(2)(b) toward the door of the building, the officers intentionally slammed him into a wall (Allegation G: Force, § 87(2)(g)). An officer pulled § 87(2)(b)'s hoodie over his head and tucked it into his jacket, restricting his breathing (Allegation H: Force, § 87(2)(g)). Once outside the building, officers threw § 87(2)(b) into the backseat of an unmarked vehicle and an officer slammed § 87(2)(b)'s right foot in the door of the vehicle (Allegations I and J: Force, § 87(2)(g)). An officer frisked and searched § 87(2)(b) (Allegations K and L: Abuse of Authority, § 87(2)(g)). § 87(4-b), § 87(2)(g)

§ 87(2)(b) was neither arrested nor summonsed during this incident.  
Video footage was obtained, which will be discussed in further detail below.

### Findings and Recommendations

#### Allegation (A) Abuse of Authority: Detective Matthew Demaio stopped § 87(2)(b)

An attorney was consulted in this case. The investigation established the following facts:

On January 2, 2019, at approximately 3 a.m., § 87(2)(b) who was intoxicated, was walking near the Marcy Houses in Brooklyn while on the phone with a friend. Det. Demaio, Detective Adam Conlin, and Lieutenant Erik Lubrano, also of SRG Anti-Crime, who were all patrolling within the confines of the 79<sup>th</sup> Precinct in an unmarked vehicle due to a rise in violent crime, observed § 87(2)(b) yelling on the phone. The officers stopped next to § 87(2)(b) to ask him if he was okay. § 87(2)(b) ran inside of § 87(2)(b) and Det. Demaio pursued § 87(2)(b) on foot. § 87(2)(b) went up the stairs to a landing, where Det. Demaio took § 87(2)(b) to the ground. Det. Demaio requested additional units over the radio and several officers from SRG Anti-Crime responded. Det. Conlin and Lt. Lubrano arrived and assisted Det. Demaio in placing § 87(2)(b) in handcuffs, as § 87(2)(b) resisted. Once § 87(2)(b) was in handcuffs, Det. Demaio and Det. Conlin left the building and performed a canvass of the area in which the foot pursuit took place. Lt. Lubrano and the other officers remained with § 87(2)(b). Det. Demaio and Det. Conlin did not recover any contraband during their search.

§ 87(2)(b) (BR 01) testified that an unmarked black sedan pulled him next to him and four males, all in hoodies, exited the vehicle. One of the males said, "Hey. What's up, man? Come here." § 87(2)(b) was afraid and ran inside § 87(2)(b) where he was staying with a friend. § 87(2)(b) did not drop anything while he was running. Approximately one minute later, Det. Conlin arrived at the second floor and identified himself as a police officer. § 87(2)(b) immediately faced the wall and raised his hands above his head. Det. Conlin asked § 87(2)(b)

§ 87(2)(b) why he ran and handcuffed him. § 87(2)(b) denied resisting Det. Conlin handcuffing him.

Det. Demaio (BR 02), Det. Conlin (BR 03), and Lt. Lubrano (BR 04) all provided generally consistent testimony that § 87(2)(b) was on the phone screaming either, “I’m gonna fuck you up” or “I’m gonna fuck this guy up when I see him,” and upon seeing the officers said, “Oh, shit. It’s the cops” or “Oh, fuck. It’s the cops,” and fled. Det. Demaio and Det. Conlin did not see any bulges on § 87(2)(b)’s person. Lt. Lubrano “could not say” if he observed any bulges on § 87(2)(b)’s person. Based on their observations of § 87(2)(b)’s body movements and flight, the officers believed § 87(2)(b) had possession of a weapon. Det. Demaio chased after § 87(2)(b) while Det. Conlin and Lt. Lubrano remained in the vehicle.

Det. Demaio (BR 02) testified that before § 87(2)(b) ran, he grabbed the front right side of his waistband and turned his body away from the officers’ vehicle. § 87(2)(b) immediately started running. Det. Demaio ran after § 87(2)(b) because he thought § 87(2)(b) had a weapon, as § 87(2)(b) turned away from Det. Demaio (blocking his view of § 87(2)(b)’s waistband), grabbed the front right side of his waistband, and had been angry with someone on the phone. As such, Det. Demaio ran after § 87(2)(b) to continue the investigation as to whether § 87(2)(b) had a weapon on his person. When Det. Demaio entered the building, § 87(2)(b) was on the middle of a staircase. Det. Demaio grabbed § 87(2)(b)’s right arm and § 87(2)(b) pulled away. Det. Demaio then took § 87(2)(b) to the ground. Less than a minute later, Det. Conlin and Lt. Lubrano then arrived to assist in handcuffing § 87(2)(b).

§ 87(2)(g)

Det. Conlin (BR 03) testified that § 87(2)(b)’s movement toward his waistband looked as if he was “cradling a weapon,” based on his previous experience with gun arrests and discoveries.

Lt. Lubrano (BR 04) testified that § 87(2)(b) was wearing a “bulky jacket” and had his elbow bent so that the lower part of his left arm curled in his pocket. Lt. Lubrano made previous arrests in which individuals used the same position to conceal or “cradle” a gun. Because § 87(2)(b) was “talking aggressively” on the phone and had his hand in the aforementioned possession, Lt. Lubrano thought § 87(2)(b) may have had a weapon.

Where a police officer entertains a reasonable suspicion that a particular person has committed, is committing, or is about to commit a felony or misdemeanor, the Criminal Procedure Law authorizes a forcible stop and detention of that person. People v. De Bour 40 N.Y.2d 210 (1976) (BR 05).

An officer’s awareness that an area is known for gang activity and observation that an individual made “constant adjustments” to his waistband, did not constitute specific circumstances indicative of criminal activity so as to establish the reasonable suspicion that was necessary to lawfully pursue the defendant, even when coupled with the defendant’s flight from the police. People v. Clermont 133 A.D.3d 612 (2015) (BR 19).

§ 87(2)(g)

**Allegation (B) Force: Detective Matthew Demaio pointed his gun at § 87(2)(b)**

§ 87(2)(b) (BR 01) testified that when Det. Conlin arrived at the second-floor hallway, he drew a small, black and gray gun and pointed it at § 87(2)(b) before approaching him and handcuffing him.

Det. Demaio (BR 02) testified that during the foot pursuit, he lost sight on § 87(2)(b) when he went inside the building and did not know how many flights of stairs § 87(2)(b) ran up. Det. Demaio drew his gun and held it at his right side because he did not see § 87(2)(b) and suspected he had a firearm. When Det. Demaio saw § 87(2)(b) he pointed at § 87(2)(b) with his left hand and told him to stop, but did not point his gun at § 87(2)(b). Once Det. Demaio saw that § 87(2)(b) did not have anything in his hands, he holstered his weapon.

As Det. Demaio testified he removed his gun from his holster and Det. Conlin was not inside the building at this time, Det. Demaio was identified as the subject officer of Allegation B.

Det. Conlin and Lt. Lubrano (BR 03-04) both testified that by the time they entered § 87(2)(b) § 87(2)(b) and Det. Demaio were already on the ground.

§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)

**Allegation (C) Force: An officer used physical force against § 87(2)(b)**

**Allegation (D) Force: An officer used physical force against § 87(2)(b)**

**Allegation (E) Force: An officer used physical force against § 87(2)(b)**

**Allegation (F) Force: An officer used physical force against § 87(2)(b)**

**Allegation (G) Force: Officers hit § 87(2)(b) against a wall.**

**Allegation (I): Force: Officers used physical force against § 87(2)(b)**

**Allegation (J): Force: An officer used physical force against § 87(2)(b)**

**Allegation (K): Abuse of Authority: An officer frisked § 87(2)(b)**

**Allegation (L): Abuse of Authority: An officer searched § 87(2)(b)**

§ 87(2)(b) (BR 01) testified that once he was placed into handcuffs, Det. Conlin punched § 87(2)(b) with a closed fist near the corner of his right eye. Det. Demaio, Det. Conlin, Lt. Lubrano, and a fourth officer carried § 87(2)(b) down the stairs so that he was parallel to the ground. An officer, who § 87(2)(b) could not identify, pushed his head down so that his head contacted every step as he went down the stairs. When the officers and § 87(2)(b) got to the first floor, an officer, § 87(2)(b) was not sure which one), slammed his head into the floor. Det. Demaio, who was in front of § 87(2)(b) punched § 87(2)(b) on the right side of § 87(2)(b)'s lower lip, causing his lip to bleed. The officers then picked § 87(2)(b) off the ground and carried him parallel to the ground again. Before the door to the building, the officers intentionally slammed § 87(2)(b) into a wall causing the upper right area of his cheek to bleed. Once outside, all four of the officers "threw" § 87(2)(b) into the backseat of an unmarked vehicle, causing § 87(2)(b)'s head to hit the inside of the door on the opposite side of the car. § 87(2)(b) could not describe how the officers "threw" him into the backseat. Once inside the vehicle, an officer slammed § 87(2)(b)'s right foot, which was near the door as he was extended on the backseat, in the door of the vehicle three times. § 87(2)(b) was not refusing to put his foot in the car. Additional officers arrived once § 87(2)(b) was placed in the vehicle. An officer, whom § 87(2)(b) could not describe, pulled him out of the vehicle three separate times and frisked and searched him.

§ 87(2)(b) who is friendly with § 87(2)(b) provided an unverified telephone statement (BR 06), but refused to provide a sworn statement. § 87(2)(b) said that she was in her apartment at § 87(2)(b) when she heard § 87(2)(b) yelling. When § 87(2)(b) went to the second floor, she saw § 87(2)(b) handcuffed on the ground surrounded by five plainclothes officers. Officers picked § 87(2)(b) up off the ground and took him to the first floor. § 87(2)(b) did not say that § 87(2)(b) was carried out of the building or say that the officers used any force against § 87(2)(b). Once § 87(2)(b) was in the vehicle, § 87(2)(b) saw that § 87(2)(b)'s right eye and jaw were swollen.

Contact attempts were made to other witnesses, § 87(2)(b) and § 87(2)(b) who were unavailable to the investigation. The investigation established contact with § 87(2)(b) via telephone, who said that he did not witness the incident and only learned about it later.

The investigation obtained video footage via a Reznick Request, which was taken by a civilian bystander, § 87(2)(b) (BR 07-08). § 87(2)(b) did not respond to contact attempts and was unavailable to the investigation. The video begins with § 87(2)(b) on his back on the floor of a stairwell landing. Lt. Lubrano is standing over § 87(2)(b) while Det. Demaio and Det. Conlin are on § 87(2)(b)'s left and right respectively. The officers are instructing § 87(2)(b) to put his hands behind his back, but § 87(2)(b) refuses to do so (<<00:00 – 01:01>>). Additional officers respond, which blocks the view of the camera (<<01:02 – 02:29>>). § 87(2)(b) comes into view as two officers, one white male with dark hair and one white male who is bald, are walking him down the stairs. As the officers get to the base of the stairs, § 87(2)(b)'s side hits into the wall of the stairwell, though it is not clear how this occurs, as the railing partially obstructs the view (<<02:30 – 02:33>>). Officers, who are not clearly depicted, pick § 87(2)(b) up and carry him parallel to the ground. This action is only partially visible through the space between the stairwell and hallway (<<02:42 – 02:46>>).

Det. Demaio (BR 02) testified that the forcible takedown and grabbing of § 87(2)(b)'s arms to handcuff him was the only force he used during the incident. Det. Demaio left the building and performed a canvass and by the time he returned, § 87(2)(b) was out of the building standing between the door of the police vehicle and the body of the vehicle. Det. Demaio did not recall exactly who responded to his call for assistance, but knew all the officers were from his command. After Det. Demaio completed the canvass, § 87(2)(b) was already outside of the police vehicle. Det. Demaio did not see any injuries on § 87(2)(b).

Det. Conlin (BR 03) denied using any force against § 87(2)(b) other than assisting Det. Demaio in grabbing § 87(2)(b)'s arms, as § 87(2)(b) kept his arms locked at his sides to prevent the officers from handcuffing him. Det. Conlin then left to perform the canvass with Det. Demaio. When Det. Conlin returned, he saw a scratch on § 87(2)(b)'s cheek and asked § 87(2)(b) about it. § 87(2)(b) said he had gotten into a fight with his roommate the night before. Det. Conlin could not identify any additional officers who responded to the scene after watching the video.

Lt. Lubrano denied using any force against § 87(2)(b). Lt. Lubrano testified that when additional officers from SRG Anti-Crime arrived, the officers led § 87(2)(b) down the stairs and out of the building, but he did not know which officers did this. § 87(2)(b) “went limp” and passively resisted so officers held § 87(2)(b) up as they went out of the building. § 87(2)(b) was never carried out parallel to the ground. Lt. Lubrano did not see any injuries on § 87(2)(b). Lt. Lubrano could not identify any additional officers who responded to the scene after watching the video.

The AVL search (BR 09) resulted in three SRG vehicles that were present: vehicle numbers § 87(2)(b) and § 87(2)(b) Detective Robert Altieri, Police Officer Mark Stevenson, and PO Kern, all of SRG Anti-Crime, assigned to vehicles § 87(2)(b) and § 87(2)(b) respectively, and vaguely matched the limited pedigree information gleaned from the video footage, were interviewed. Det. Altieri (BR 10) and PO Stevenson (BR 11) denied entering the building or interacting with § 87(2)(b) and testified that they only canvassed the exterior of the location for contraband upon their arrival. PO Kern (BR 12) testified that he entered the lobby of the building, but § 87(2)(b) was already apprehended. PO Kern denied interacting with § 87(2)(b) and did not know how § 87(2)(b) was removed from the building. Det. Altieri, PO Stevenson, and PO Kern all reviewed the aforementioned video, but could not identify the officers who bring § 87(2)(b) downstairs.

The Resource Recap Log from Police Service Area 3 (PSA 3) returned negative results for officers responding to calls at § 87(2)(b) (BR 13).

§ 87(2)(g)

§ 87(2)(g)

**Allegation (H) Force: An officer restricted § 87(2)(b)'s breathing.**

§ 87(2)(b) (BR 01) testified that before the officers carried § 87(2)(b) out of the building, an officer pulled § 87(2)(b)'s hoodie over his head and tucked it into his jacket, restricting his breathing. Once § 87(2)(b) was placed in the car, an officer, whom he could not describe, took the hood off § 87(2)(b)'s face.

In her unverified telephone statement (BR 06), § 87(2)(b) stated that she did not see a hoodie over § 87(2)(b)'s face during the incident.

In the video taken by § 87(2)(b) which shows officers apprehending § 87(2)(b) and leading him out of the build, at no point is § 87(2)(b)'s hoodie seen over his head and face (BR 07-08).

Det. Demaio, Det. Conlin, and Lt. Lubrano all denied pulling § 87(2)(b)'s hoodie over his face and restricting his breathing (BR 02-04).

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

### Allegations Not Pleaded

- § 87(2)(g)

### Civilian and Officer CCRB Histories

- § 87(2)(b)
- Det. Demaio has been a member of service for seven years and has been a subject in six CCRB complaints and 19 allegations, of which one was substantiated.
  - 201606783 involved a substantiated allegation of a vehicle search. The Board recommended formalized training and the NYPD imposed formalized training.
  - Of the 19 allegations pled against Det. Demaio, six of them involve either a stop, frisk, or search (of a person).
- Det. Conlin has been a member of service for 11 years and has been a subject in 9 CCRB complaints and 22 allegations, of which one was substantiated:
  - 201309936 involved a substantiated allegation of a search (of a person). The Board recommended command discipline and the NYPD imposed formalized training.
  - § 87(2)(g)
- Lt. Lubrano has been a member of service for 20 years and has been a subject in 10 CCRB complaints and 26 allegations, of which one was substantiated:
  - 200606390 involved a substantiated allegation of a vehicle search. The Board recommended charges and the NYPD imposed instructions.
  - § 87(2)(g)
- PO Kern has been a member of service for six years and has been a subject in six CCRB complaints and 13 allegations, none of which was substantiated. § 87(2)(g)

### Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.



- As of February 14, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this complaint (BR 15).
- § 87(2)(b) [REDACTED]  
[REDACTED]  
[REDACTED]

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date